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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs,

vs.

META PLATFORMS, INC.,

Defendant.

This Document Relates To: All Consumer
Actions

Consolidated Case No. 3:20-cv-08570-JD

**JOINT PROPOSED VERDICT FORMS AND
OBJECTIONS**

The Hon. James Donato

Pretrial Conference: September 25, 2025

Trial: November 17, 2025

TABLE OF CONTENTS

	<u>Page</u>
PLAINTIFFS' PROPOSED VERDICT FORM	1
PLAINTIFFS' ALTERNATIVE PROPOSED VERDICT FORM (IF SPECIAL VERDICT FORM GIVEN OVER PLAINTIFFS OBJECTION)	3
META'S PROPOSED VERDICT FORM	8
PLAINTIFFS' POSITION RE VERDICT FORM	13
META'S POSITION RE VERDICT FORM	15

PLAINTIFFS' PROPOSED VERDICT FORM

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your verdict must be unanimous.

We, the jury, return these answers as our verdict in this case:

Count I – Monopolization, Section 2 of the Sherman Act

Question No. 1:

Did Plaintiffs prove, by a preponderance of evidence, that Meta willfully acquired or maintained monopoly power by engaging in anticompetitive conduct?

YES _____ NO _____

If you answered “Yes” to Question No. 1, then continue to Question No. 2.

If you answered “No” to Question No. 1, then continue to Question No. 3.

Question No. 2:

If you answered “Yes” to Question No. 1, state the amount of damages proven by Plaintiffs for Meta’s monopolization that you found.

Plaintiff Maximilian Klein: \$ _____

Plaintiff Sarah Grabert: \$ _____

Plaintiff Rachel Banks Kupcho: \$ _____

Count II – Attempted Monopolization, Section 2 of the Sherman Act

Question No. 3:

Did Plaintiffs prove, by a preponderance of evidence, that Meta attempted to acquire or maintain monopoly power by engaging in anticompetitive conduct?

YES _____ NO _____

If you answered “Yes” to Question No. 3, then continue to Question No. 4.

If you answered “No” to Question No. 3, then go to the bottom of the form.

Question No. 4:

If you answered “Yes” to Question No. 3, state the amount of damages proven by Plaintiffs for Meta’s attempted monopolization that you found.

Plaintiff Maximilian Klein: \$ _____

Plaintiff Sarah Grabert: \$ _____

Plaintiff Rachel Banks Kupcho: \$ _____

You have now reached the end of the Verdict Form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the Verdict Form in the spaces below and notify the Courtroom Deputy that you have reached a verdict. The Presiding Juror should retain possession of the Verdict Form and bring it when the jury is brought back into the courtroom.

DATED: _____

Signed: _____

Presiding Juror

**PLAINTIFFS' ALTERNATIVE PROPOSED VERDICT FORM (IF SPECIAL VERDICT
FORM GIVEN OVER PLAINTIFFS OBJECTION)**

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your verdict must be unanimous.

We, the jury, return these answers as our verdict in this case:

Count I – Monopolization, Section 2 of the Sherman Act

Question No. 1:

Did Plaintiffs prove the existence of the Personal Social Networking Services Market in the United States?

YES _____ NO _____

If you answered “Yes” to Question No. 1, then proceed directly to Question No. 3.

If you answered “No” to Question No. 1, then continue to Question No. 2.

Question No. 2:

If you answered “No” to Question 1, did Plaintiffs prove the existence of another relevant antitrust market?

YES _____ NO _____

If you answered “Yes” to Question No. 2, please specify the relevant product market and associated geographic market that Plaintiffs proved, then continue to Question No. 3.

<u>Relevant Product Market</u>	<u>Relevant Geographic Market</u>

If you answered “No” to Question No. 2, then go to Question No. 6.

Question No. 3:

Did Plaintiffs prove that Meta willfully acquired or maintained monopoly power by engaging in anticompetitive conduct in any market that you specified in response to Question No. 1 or Question No. 2?

YES _____ NO _____

If you answered “Yes” to Question No. 3, then continue to Question No. 4.

If you answered “No” to Question No. 3, then go to Question No. 6.

Question No. 4:

If you answered “Yes” to Question No. 3, did Plaintiffs prove that they were injured as a result of Meta’s violation of the antitrust laws?

YES _____ NO _____

If you answered “Yes” to Question No. 4, then continue to Question No. 5.

If you answered “No” to Question No. 4, then go to Question No. 6.

Question No. 5:

If you answered “Yes” to Question No. 4, state the amount of damages proven by Plaintiffs for Meta’s monopolization that you found.

Plaintiff Maximilian Klein: \$ _____

Plaintiff Sarah Grabert: \$ _____

Plaintiff Rachel Banks Kupcho: \$ _____

Count II – Attempted Monopolization, Section 2 of the Sherman Act

Question No. 6:

Did Plaintiffs prove the existence of the Personal Social Networking Services Market in the United States?

YES _____ NO _____

If you answered “Yes” to Question No. 6, then proceed directly to Question No. 8.

If you answered “No” to Question No. 6, then continue to Question No. 7.

Question No. 7:

If you answered “No” to Question 6, did Plaintiffs prove the existence of another relevant antitrust market?

YES _____ NO _____

If you answered “Yes” to Question No. 7, please specify the relevant product market and associated geographic market that Plaintiffs proved, then continue to Question No. 8.

<u>Relevant Product Market</u>	<u>Relevant Geographic Market</u>

If you answered “No” to Question No. 7, then go to the bottom of the form.

Question No. 8:

Did Plaintiffs prove that Meta, with a specific intent, had a dangerous probability of acquiring or maintaining monopoly power by engaging in anticompetitive conduct in any market that you specified in response to Question No. 6 or Question No. 7?

YES _____ NO _____

If you answered “Yes” to Question No. 8, then continue to Question No. 9.

If you answered “No” to Question No. 8, then go to the bottom of the form.

Question No. 9:

If you answered “Yes” to Question No. 8, did Plaintiffs prove that they were injured as a result of Meta’s violation of the antitrust laws?

YES _____ NO _____

If you answered “Yes” to Question No. 9, then continue to Question No. 10.

If you answered “No” to Question No. 9, then go to the bottom of the form.

Question No. 10:

If you answered “Yes” to Question No. 9, state the amount of damages proven by Plaintiffs for Meta’s attempted monopolization that you found.

Plaintiff Maximilian Klein: \$ _____

Plaintiff Sarah Grabert: \$ _____

Plaintiff Rachel Banks Kupcho: \$ _____

1 You have now reached the end of the Verdict Form and should review it to ensure it accurately
2 reflects your unanimous determinations. The Presiding Juror should then sign and date the
3 Verdict Form in the spaces below and notify the Courtroom Deputy that you have reached a
4 verdict. The Presiding Juror should retain possession of the Verdict Form and bring it when
the jury is brought back into the courtroom.

5 DATED: _____

Signed:

Presiding Juror

META'S PROPOSED VERDICT FORM

You, the Jury, are to answer the following questions based on the evidence you've seen during this trial and according to the instructions.

COUNT ONE

(Sherman Act § 2—Monopolization)

Question 1

1. Have Plaintiffs proved that Personal Social Networking Services constitutes a relevant antitrust market?

☐ YES

☐ NO

If you answered "NO" to Question 1, please proceed to the end of the verdict form, then sign and date the form.

If you answered "YES" to Question 1, proceed to Question 2.

Question 2

2. Have Plaintiffs proved that the United States is a relevant geographic market?

☐ YES

☐ NO

If you answered "NO" to Question 2, please proceed to the end of the verdict form, then sign and date the form.

If you answered "YES" to Question 2, proceed to Question 3.

Question 3

3. Have Plaintiffs proved that Meta possesses monopoly power in the Personal Social Networking Services Market in the United States?

☐ YES

☐ NO

If you answered "NO," please proceed to the end of the verdict form, then sign and date the form.

If you answered "YES," please proceed to Question 4.

Question 4

4. Have Plaintiffs proved that each of the challenged representations and omissions were:

Alleged Conduct	Answer	
Made by Meta or its authorized agent	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Clearly false	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Clearly material	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Clearly likely to induce reasonable reliance	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Made to persons without knowledge of the subject matter	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Continued for prolonged periods of time	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Not readily susceptible of neutralization or other offset by rivals	<input type="checkbox"/> YES	<input type="checkbox"/> NO

If you answered “NO” to ANY of the parts of Question 4 in the table above, please proceed to the end of the verdict form, then sign and date the form.

If you answered “YES” to ALL parts of Question 4 in the table above, have Plaintiffs proved that each of the challenged representations and omissions had a significant and enduring adverse impact on competition?

☐ YES ☐ NO

If you answered “NO,” please proceed to the end of the verdict form, then sign and date the form.

If you answered “YES,” please proceed to Question 5.

Question 5

5. Please write the statement(s) for which you answered all aspects of Question 4 “YES.” If you did not answer all aspects of Question 4 “YES” for any statement, please check the box for “NONE”:

Statement	Speaker	Source	Date

☐ NONE

If you selected “NONE,” please proceed to the end of the verdict form, then sign and date the form.

If you listed one or more statements, please proceed to Question 6.

Question 6

6. Has Meta shown that the conduct challenged had a legitimate business justification?

☐ YES

☐ NO

If you answered “NO,” please proceed to Question 7.

If you answered “YES,” please proceed to the end of the verdict form, then sign and date the form.

Question 7

7. Have Plaintiffs proved that they suffered injury to their business or property because of the statements you identified in response to Question 5?

☐ YES

☐ NO

If you answered "NO," please proceed to the end of the verdict form, then sign and date the form.

If you answered "YES," please proceed to Question 8.

Question 8

8. Did any of the statements you identified in Question 5 occur before December 3, 2016?

☐ YES

☐ NO

If you answered "NO," please proceed to Question 11.

If you answered "YES," please proceed to Question 9.

Question 9

9. Have Plaintiffs proved that Meta committed a new and independent act after December 3, 2016 that was not merely a reaffirmation of a previous act?

☐ YES

☐ NO

If you answered "NO," please proceed to the end of the verdict form, then sign and date the form.

If you answered "YES," please proceed to Question 10.

Question 10

10. Have Plaintiffs proved that the statements you identified in Question 5 inflicted a new and accumulating injury on plaintiffs after December 3, 2016?

☐ YES

☐ NO

If you answered "NO," please proceed to the end of the verdict form, then sign and date the form.

If you answered "YES," please proceed to Question 11.

Question 11

11. State the damages to each plaintiff caused by the statements you identified in Question 5 that occurred after December 3, 2016:

Maximilian Klein: _____

Sarah Grabert: _____

Rachel Banks Kupcho: _____

Please sign and date the verdict form below.

Dated: _____ FOREPERSON _____

ATTEMPT INSTRUCTIONS (If Given Over Meta's Objection)

1. Have Plaintiffs proved that Meta willfully made the statements identified in Question [X] with specific intent to achieve monopoly power in the Personal Social Networking Services Market in the United States?
2. Have Plaintiffs proved that there was a dangerous probability that Meta would achieve its goal of obtaining monopoly power in the Personal Social Networking Services Market in the United States through the statements you identified in response to Question [X]?

PLAINTIFFS' POSITION RE VERDICT FORM

Plaintiffs propose a general verdict form. If the Court is inclined to give a special form over their objection, Plaintiffs propose one based on this Court's *Epic* and *Capacitors* forms.

First, Meta's form improperly omits questions regarding Plaintiffs' attempted monopolization claim. Meta's position that Plaintiffs "waived" their attempt claim during discovery and/or at summary judgment is baseless. Plaintiffs' complaint reflects each count (Dkt. 87 ¶¶ 260–83), and this Court acknowledged both of them in its class certification order (Dkt. 905 at 2). At no point has the Court dismissed Plaintiffs' attempt claim. Meta's argument Plaintiffs cannot alternatively maintain claims for both "monopoly maintenance" and attempted monopolization is wrong, as Plaintiffs detail in their arguments as to Jury Instructions Nos. 2, 16, 22, and the like. The verdict form must reflect Plaintiffs' attempt claim, and allow the jury flexibility as to "acquisition," as Plaintiffs' form does.¹

Second, Meta's form is improperly restrictive in referencing the PSNS Market. In Meta's form, Plaintiffs lose if they do not prove the **PSNS Market** or Meta's power in **the PSNS Market**. Plaintiffs object to any verdict form that requires defining a market as an element of Plaintiffs' claims, as market definition is only necessary where showing the defendant's power indirectly (defining a market and calculating share), not directly (through anticompetitive effects). *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 307 n.3 (3d Cir. 2007). Plaintiffs will provide direct and indirect proof of Meta's power, permitting the jury to find for Plaintiffs without defining the market. Even were market definition required, Meta errs in asserting Plaintiffs take nothing if they do not prove the **PSNS Market** and Meta's power in that market only. The proof supporting the PSNS Market is overwhelming, but the jury must be permitted to find Meta has monopoly power in another market, including a permutation of the PSNS Market. That is what this Court recognized in *Epic*, which is why it ruled the verdict form should not be limited to the Epic's proffered market but instead allow the jury to find an alternate one. Case No. 3:21-md-2981-J.D. (N.D. Cal.), Dkts. 861 & 849 at 3244–

¹ Meta's in the alternative "attempt" questions should also be rejected. Plaintiffs' general form addresses the "specific intent" and "dangerous probability" elements for an attempt claim by requiring the jury to answer whether Plaintiffs proved that claim, those elements on which the jury will be instructed. Plaintiffs' special form also addresses those elements with specific questions (Nos. 8 & 9). Meta's "attempt" questions also err by specifically requiring the jury to find the PSNS Market (rather than "a relevant market"), as discussed below.

1 45; *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 978 n.9 (9th Cir. 2023). Plaintiffs form does so.

2 **Third**, Meta’s Question Nos. 4 and 5 misstate what is required as to Plaintiffs’ theory of
 3 anticompetitive conduct based on Meta’s deception. Meta invokes the six-part test from *Am. Pro.*
 4 *Testing Serv., Inc. v. Harcourt Brace Jovanovich Legal & Pro. Publications, Inc.*, which concerns a
 5 defendant’s “disparagement” of a rival. 108 F.3d 1147, 1152 (9th Cir. 1997). That test is not
 6 applicable here—Plaintiffs assert Meta monopolized the market by deceiving the market as to Meta’s
 7 own privacy and data practices, not by disparaging a rival. *CoStar Grp., Inc. v. Com. Real Est. Exch.,*
 8 *Inc.*, 2025 WL 2573045, at *12 (9th Cir. Sept. 5, 2025) (defendant’s deception to adopt its platform
 9 is anticompetitive; not mentioning *Harcourt Brace* or six-part test). While Judge Koh previously
 10 applied *Harcourt Brace* to Plaintiffs’ claims, over Plaintiffs’ objection (Dkts. 109 at 22–23, 648 at
 11 5), other courts have not applied that framework (which Plaintiffs referenced at summary judgment,
 12 Dkt. 953 at 13), and the Ninth Circuit did not in *CoStar*, which post-dates Judge Koh’s ruling. Other
 13 courts have also not applied *Harcourt Brace* where, as here, the defendant deceives the market to
 14 adopt its own technology. *Arista Networks, Inc. v. Cisco Sys. Inc.*, 2018 WL 11230167, at *12 (N.D.
 15 Cal. May 21, 2018). Further, Meta’s questions are legally erroneous in requiring Plaintiffs to meet
 16 **each** element of *Harcourt Brace* as to **each** deception. Nor, as required in Meta’s Question No. 4,
 17 must Plaintiffs prove that “**each**” deception (as in all) affected competition; it is enough if one did.

18 **Fourth**, Meta’s Question No. 6 regarding “legitimate business justification” is unnecessary,
 19 incomplete, and invites legal error. In answering whether Meta acted anticompetitively, the jury will
 20 have answered whether Meta’s conduct was justified. Additionally, even if Meta establishes a
 21 legitimate business justification, under the law, that does not constitute a finding of no liability, as
 22 Meta’s form incorrectly requires. Instead, Plaintiff may then counter it (Step 3 of the rule-of-reason),
 23 and, in any event, there is subsequent balancing (Step 4 of the rule-of-reason). *Epic Games, Inc. v.*
 24 *Apple, Inc.*, 67 F.4th 946, 990 (9th Cir. 2023). Meta’s form includes none of these factors.

25 **Finally**, Plaintiffs object to Meta’s inclusion of three separate questions relating to the statute
 26 of limitations. As explained in Plaintiffs’ Arguments as to Jury Instruction Nos. 34 and 35, Plaintiffs
 27 challenge conduct and seek to recover for injuries that occurred **during** the limitations period. At a
 28 minimum, Meta’s three separate questions are unnecessary and confusing.

META’S POSITION RE VERDICT FORM

Meta’s proposal is modeled after this Court’s jury instructions and the verdict forms provided in *In re Capacitors Antitrust Litigation*, Case No. 3:14-cv-03264-JD and *Epic Games, Inc. v. Google LLC et al.*, Case No. 3:20-cv-05671-JD. Plaintiffs’ “general” verdict form fails to include questions on topics reflected in the jury instructions and specific questions the Ninth Circuit has instructed must be answered. Plaintiffs then proposed an equally deficient “special” verdict form the night before this filing. Both are incomplete, confusing, would impede review, and are incorrect as a matter of law.

First, plaintiffs’ proposals invite the jury to find liability without determining whether plaintiffs satisfied every element of a Section 2 claim. Courts frequently adopt verdict forms with the level of detail included in Meta’s form, especially for complex antitrust claims. *E.g.*, *MCI Commc’ns Corp. v. ATT Co.*, 708 F.2d 1081, 1093 (7th Cir. 1983) (upholding “special verdict form [that] required the jury to make a separate finding of liability as to each of the fifteen charges”); *Sidibe v. Sutter Health*, No. 3:12-cv-04584, Dkt. 1530 (N.D. Cal. Mar. 11, 2022) (verdict form asking for element-by-element factual findings in antitrust case); *In re: HIV Antitrust Litig.*, No. 3:19-cv-02573, ECF No. 2057 (N.D. Cal. June 30, 2023) (same). Plaintiffs’ general verdict form is particularly deficient because it omits the requirement that plaintiffs prove a relevant market— “[a] threshold step in any antitrust case.” *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020). “Failing to define a relevant market alone is fatal to an antitrust claim,” and plaintiffs’ general form elides that requirement entirely. *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 957 (9th Cir. 2023). Plaintiffs’ special verdict form suffers similar faults, improperly rolling together numerous requiring findings into single questions like “Did Plaintiffs prove that Meta willfully acquired or maintained monopoly power by engaging in anticompetitive conduct in any market that you specified to Question No. 1 or Question No. 2?” The failure to require a specific finding on monopoly power alone is legally dispositive; Meta cannot be found liable for monopolization absent such a determination by the jury.

Second, plaintiffs’ forms ignore the legal test applicable to their claims, and suggest that Meta’s conduct could violate the antitrust laws without the jury applying the *Harcourt* test. Antitrust

1 claims premised on deception “should presumptively be ignored” and the Ninth Circuit has
 2 established a six-part test to identify those rare instances in which such allegations can “overcome
 3 a presumption that the effect on competition . . . [i]s de minimis.” *Am. Pro. Testing Serv., Inc. v.*
 4 *Harcourt Brace Jovanovich Legal & Pro. Publications, Inc.*, 108 F.3d 1147, 1151-52 (9th Cir.
 5 1997). Plaintiffs expressly told this Court their claims were subject to the *Harcourt* test, Hr’g Tr.
 6 9:10-18 (Apr. 26, 2024),² and failed to challenge application of *Harcourt* in their opposition to
 7 Meta’s motion for summary judgment. MSJ Opp. 10, 13, & n.4, Dkt. 952-01.

8 Moreover, plaintiffs’ argument that *Harcourt* only applies to so-called rival disparagement
 9 claims has already been rejected ***in this case***. In response to plaintiffs’ similar argument on their
 10 motion to dismiss, the Court found that the *Harcourt* test applies to claims like this one, where the
 11 claim is that “the defendant made false statements about its own product.” *Klein v. Facebook, Inc.*,
 12 580 F. Supp. 3d 743, 785 (N.D. Cal. 2022) (citing cases); *see also* Areeda & Hovenkamp, Antitrust
 13 Law ¶782b (recognizing application of *Harcourt* to statements about a defendant’s products).

14 ***Third***, plaintiffs direct the jury to make findings on issues that are not properly part of this
 15 case. On relevant market, plaintiffs invite the jury to select a market other than the sole market
 16 (PSNS) plaintiffs allege. That is improper. Plaintiffs point to the verdict form in *Epic*, but that case
 17 involved multiple asserted markets. Here, plaintiffs have advanced only one, and so the only
 18 question before the jury is whether plaintiffs have proved the one market they have alleged.
 19 Likewise, plaintiffs should not be able to present their acquisition and attempt theories to the jury
 20 for the reasons set forth in Meta’s objections to plaintiffs’ jury instructions Nos. 2 and 16. Thus,
 21 neither belongs on the verdict form. If the Court decides to instruct the jury on attempt, Meta
 22 proposes potential instructions above.

23 ***Finally***, plaintiffs omit Meta’s business justification defense. Meta is entitled to raise that
 24 argument, and the jury instructions explain the necessary showing, so it belongs on the verdict form.

25
 26 ² “MS. SCARLETT: The test that applies to the case that the consumers have brought—separate
 27 from the advertisers—is under a Ninth Circuit called Harcourt Brace. And there are six factors. One
 28 whether or not the deceptive conduct continued for a prolonged period, whether it was clearly
 material to consumers, whether it was clearly false, whether or not it was likely to induce reasonable
 reliance, and whether it was made to buyers with knowledge of the subject.”

DATED: September 11, 2025

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ATTESTATION OF KEVIN Y. TERUYA

This document is being filed through the Electronic Case Filing (ECF) system by attorney Kevin Y. Teruya. By his signature, Mr. Teruya attests that he has obtained concurrence in the filing of this document from each of the attorneys identified on the caption page and in the above signature block.

Dated: September 11, 2025

By /s/ Kevin Y. Teruya
Kevin Y. Teruya